

COMMERCIAL RETAIL LEASE

THIS COMMERCIAL LEASE (the "Lease"), is made and entered into as of October 7, 2004, by and between RAINIER COMMONS, LLC, a Washington limited liability company as ("Landlord") and TULLY'S COFFEE CORPORATION, a Washington corporation as ("Tenant").

1. **RETAIL STORE.** Landlord is the owner of certain real property legally described in Exhibit A attached hereto and by this reference incorporated herein (the "Property"). Situated on the Property are certain buildings and land improvements located at 3100 Airport Way South, Seattle, Washington (the "Project"). Pursuant to a Lease dated as of August 16, 1999 (together with subsequent amendments, referred to herein as the "Tully's Brewery Lease"), Tenant leases from Landlord certain premises located within the Project (the "Tully's Premises"). Rainier Commons, LLC became successor landlord under the Tully's Brewery Lease as the result of its purchase of the Project on July 17, 2003. Landlord is developing the remainder of the Project (the "Available Space") for other tenants and other business uses. Landlord wishes to construct within the Available Space a "build to suit" free-standing retail building with drive-through facilities (the "Retail Store") as further described herein, and Tenant wishes to lease such a "build to suit" free-standing retail building with drive-through facilities as further described herein. The approximate location of the Retail Store is shown on Exhibit B. In consideration of the mutual promises, covenants, and conditions herein set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Retail Store, with a building floor area of not less than 1,300 square feet as shown by Exhibit B attached hereto and by this reference incorporated herein.

1.1 **Substitute Store.** In the event that Landlord is unable for any reason to construct the Retail Store and deliver it to Tenant as provided in this Lease, at any time prior to the Expiration Date (as defined in Section 2.1 of this Lease) Landlord may propose an alternative location in King County, Washington for the construction of a free-standing retail building with drive-through facilities for Tenant's use (the "Substitute Store") which Tenant shall not unreasonably reject. If the alternative location and the proposed premises are acceptable to Tenant, Tenant shall notify Landlord and the parties shall execute a commercial lease and incorporated exhibits for the Substitute Store (the "Substitute Lease") which shall be identical to the Lease and its incorporated exhibits, except that (a) the address and legal description of the Substitute Store shall be substituted for those of the Retail Store, (b) the Substitute Lease shall not include this Section 1.1 or Sections 23.3, 24.4 and 24.5, (c) all references to the "the Retail Store or the Substitute Store" in the Substitute Lease shall be restated to say "the Retail Store", (d) Exhibit C shall be revised to reflect the proper parties, and (f) Exhibits A and B shall be restated in their entirety to reflect the legal description and site plan for the Substitute Store. Furthermore, if the Substitute Store is not on the Property or not owned by Landlord, references and provisions relating to the "Project" and "Property" in the Substitute Lease shall be amended as necessary to reflect comparable treatment for the Substitute Store and the underlying and any adjacent premises owned by Landlord, or the owner of the property on which the Substitute Store is located, as this Lease provides with respect to the Retail Store and the Project and Property, if applicable, and the landlord under the Substitute Lease shall assume all obligations of Landlord hereunder, except as set forth above. Upon execution of the Substitute Lease this Lease shall immediately thereafter be null and void, except that Landlord shall remain liable for the payment of the Late Delivery Penalty Fee if the landlord under the Substitute Lease does not make any such payment after it becomes due. All references to the Retail Store herein shall be deemed to include the Substitute Store where the context so requires.

2. TERM.

2.1 **Term.** The initial term of this Lease shall commence on the date that Landlord delivers the Retail Store to Tenant with Landlord's Work (hereinafter defined) complete in accordance with Exhibit C and

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Tenant's acceptance of the Retail Store (the "Commencement Date") and shall end on May 14, 2010 (the "Expiration Date"), unless sooner terminated or extended as provided herein (the "Initial Term"). Landlord shall notify Tenant in writing fourteen (14) days in advance of the date that Landlord will complete the work described on Exhibit C ("Landlord's Work"). Notwithstanding any provision to the contrary contained herein, Tenant shall not be deemed to have accepted the Retail Store until each of the following conditions has been satisfied: (a) Landlord and Tenant have inspected the Retail Store and Tenant has accepted the Retail Store by giving written notice to the Landlord; (b) Landlord has delivered a fully executed copy of this Lease to Tenant; and (c) Landlord has delivered to Tenant the certificate required under section 4 of this Lease. The delivery date shall occur no earlier than December 1, 2004 and no later than May 31, 2005. If Landlord fails to deliver the Retail Store on or before May 31, 2005 (with all of Landlord's Work complete) then Landlord shall reimburse the Tenant at a rate of \$100.00 per day beginning on June 1, 2005 and continuing until the earlier of (a) February 8, 2016, or (b) the date the Retail Store or the Substitute Store is delivered (the "Late Delivery Penalty Fee"). The Late Delivery Penalty Fee shall become an additional condition of delivery of the space to Tenant and shall be paid monthly on or before the first day of the month. Promptly after the Commencement Date, Landlord and Tenant shall execute a memorandum stating the actual Commencement Date, Rent Commencement Date and Expiration Date. For purposes of this Lease, the word "Term" shall mean the Initial Term and any Extension Term (as defined in Section 2.4 below). The Initial Term shall not be extended by the Commencement Date being later than May 31, 2005.

2.2 Rent Commencement. The Rent shall commence 90 days after the Commencement Date (the "Rent Commencement Date").

2.3 Lease Year. For the purpose of this Lease, the term "Lease Year" shall mean and refer to that period of twelve (12) full consecutive calendar months beginning with the first full calendar month of the Term and each subsequent period of twelve (12) consecutive calendar months during the Term, provided that if the Term commences on other than the first day of a calendar month, then the initial fractional month of the Term plus the next succeeding twelve (12) full calendar months shall constitute the first Lease Year of the Term.

2.4 Extension.

2.4.1 Tenant shall have the option to extend the term of this Lease for two (2) consecutive five (5) year periods (each an "Extension Term"), upon the same terms and conditions as contained in this Lease. The rent for the Initial Term and each Extension Term shall be as set forth in Article 3 below. To exercise an extension option, Tenant shall give Landlord written notice at least one hundred eighty (180) days prior to the then-current Expiration Date ("Tenant's Extension Notice"). Tenant's Extension Notice shall be effective to extend the Term of the Lease without further documentation except as expressly provided in Section 2.4.2 below.

2.4.2 At any time after Tenant has automatically exercised its option to extend this Lease and the rent for the Extension Term, if necessary, has been finally determined, Landlord and Tenant, upon request of either, will sign and acknowledge a written memorandum evidencing Tenant's exercise of the option and stating the date to which such Extension Term will extend and the rental rates that will be applicable during such Extension Term.

3. RENT.

3.1 Gross Rent. Landlord and Tenant intend that this Lease shall be a "gross" lease, whereby Tenant shall only pay the rent amount set forth in the Lease, and Landlord shall be responsible for payment of all taxes, insurance, utilities (to the extent set forth in Section 11 of the Lease), trash service, and all

maintenance obligations set forth herein with respect to the Retail Store, the Common Areas, and the Project without any additional compensation or reimbursement from Tenant whatsoever. Tenant shall pay to Landlord at the address stated herein, or to such other person or at such other place as Landlord may designate in writing, rent as follows ("Gross Rent"):

INITIAL TERM:

<u>YEARS</u>	<u>MONTHLY*</u>
Rent Commencement – 7/31/05	\$2,182.64
8/1/05-7/31/06	\$2,287.41
8/1/06-7/31/07	\$2,397.20
8/1/07-7/31/08	\$2,512.27
8/1/08-7/31/09	\$2,632.86
8/1/09-5/14/10	\$2,759.23

* For the first three months of the Initial Term after the Rent Commencement Date, the Gross Rent shall be 50% of the monthly amount set forth in this section.

Tenant shall commence to pay the monthly Gross Rent and all other charges hereunder beginning on the Rent Commencement date and shall continue to pay Gross Rent in monthly installments on or before the first day of every month thereafter during the Initial Term and each Extension Term. Rent for any period less than one calendar month shall be prorated on a daily basis based on a three hundred sixty-five (365) day year.

EXTENSION RENT:

Gross Rent for the first year of each Extension Term shall be adjusted to Fair Market Rent as mutually agreed to between Landlord and Tenant but in no event will the increase in rent for the first year of such Extension Term exceed 4.8% of the Gross Rent of the last month of the prior term. The Gross Rent for the remaining years of each Extension Term shall increase on an annual basis by 4.8%. In the event that Landlord and Tenant are unable to agree upon the Fair Market Rent within sixty (60) days after the date of Tenant's Extension Notice, the amount of the Gross Rent for each month of such Extension Term shall be established by appraisal. The appraisal procedure shall commence on the sixtieth (60th) day after the date of the Extension Notice (the "Rent Appraisal Date"). Within ten (10) days after the Rent Appraisal Date, Landlord and Tenant shall each appoint an appraiser and notify the other party in writing of such appointment by identifying the respective appraiser so chosen. Any appraiser selected under this paragraph shall be an MAI appraiser or licensed real estate broker (experienced in retail leasing in the area of the Retail Store or, if appraisers experienced in retail leasing are not available, then experienced in commercial office building leasing) who shall have not less than seven (7) years of experience with respect to commercial property appraisal, management and/or marketing in the geographic real estate market where the Retail Store is situated, which person shall not have been regularly employed, directly or indirectly, during the past five (5) years by the party selecting such person. Not later than twenty (20) days after both appraisers are appointed, they shall determine the Fair Market Rent; provided, if a party fails to appoint an appraiser within the time specified above for such appointment, then the appraiser appointed shall determine the Fair Market Rent and his or her decision shall be final and binding. If the two (2) selected appraisers are unable to agree on the said fair Market Rent within said twenty (20) days, then the appraisers shall promptly inform the parties of this fact and the two appraisers shall select a third appraiser (having the same or better qualifications as the first two appraisers) not later than ten (10) days after said twenty (20) day period; provided, if such third appraiser is not so selected for any reason, then

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either party may apply to the Presiding Judge of the Superior Court of the County in which the Retail Store are located for such appointment. Each of the three appraisers shall, within twenty (20) days after selection or appointment of the third appraiser, submit to the other appraisers an opinion as to the Fair Market Rent, and the Fair Market Rent shall be an amount equal to the average of the three amounts submitted by the appraisers; provided, however, if any amount submitted by an appraiser differs from the middle appraisal by more than five percent (5%) then such amount shall be disregarded in determining the Fair Market Rent. The final decision of the appraisers shall be made not later than thirty (30) days after appointment of the third appraiser, and any decision made hereunder shall be binding on Landlord and Tenant. Landlord and Tenant shall each be responsible for the costs, charges, expenses and fees of its respective appointed appraiser; both Landlord and Tenant shall share equally in the costs, charges, expenses and fees of the third appraiser, if any. In addition, in no event shall the Gross Rent for the first year of any Extension Term be less than the Gross Rent payable in the Lease Year immediately prior to the commencement of such Extension Term.

3.2 Percentage Rent.

In addition to the Gross Rent to be paid by Tenant pursuant to Section 3.1 above, Tenant shall pay to Landlord percentage rent in an amount calculated by multiplying Tenant's Gross Sales from the Retail Store (hereinafter defined) for any calendar year by fifteen percent (15%), and subtracting therefrom Gross Rent paid by Tenant in such calendar year. In making this computation, Tenant shall exclude all of Tenant's Gross Sales during the ninety (90) day period between the Commencement Date and the Rent Commencement Date, and shall exclude fifty percent (50%) of Tenant's Gross Sales for the first three months after the Rent Commencement Date. Within thirty (30) days after the end of each calendar year during the Lease Term, Tenant shall furnish to Landlord a written statement certified by Tenant to be correct, showing total Gross Sales made in, upon and/or from the Retail Store during the preceding calendar year, at which time Tenant shall pay to Landlord a sum equal to the Percentage Rent rate of the total Gross Sales made in, upon and/or from the Retail Store during such period less the Gross Rent paid by Tenant to Landlord pursuant to Section 3.1 for such period. The term "Gross Sales" shall mean the gross proceeds collected by Tenant from third party customers (including without limitation employees and shareholders of Tenant) from the sales of products or services in the Retail Store, but shall not include any of the following items: (a) goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant; (b) receipts from public telephones, wireless and other computer networks installed solely for use by the Tenant, Tenant's employees or invitees; (c) sales taxes, so-called luxury taxes, consumer's excise taxes, gross receipt taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services if collected from customers; (d) sales of fixtures, equipment, property or bulk sales not in the ordinary course of business; (e) sales of gift certificates and gift cards; (f) fees received for classes, demonstrations and franchise sales events conducted within the Retail Store at no profit to Tenant and for the primary purpose of selling franchises, training employees of Tenant or increasing Gross Sales; (g) sales or transfers of coffee, foodstuffs or other products from the Retail Store for use in meetings and events within the Tully's Premises; (h) allowances and discounts received from suppliers for the promotion or sale of their products or services within the Retail Store; or (i) insurance proceeds received from the settlement of claims for loss or damage to merchandise, fixtures or other personal property of the Tenant. Tenant may maintain its sales records at such location as may be used for Tenant's accounting functions. Such books and records with respect to any calendar year shall be kept for a period of not less than two (2) years after submission to Landlord of the Gross Sales statement or statements for that calendar year. Landlord shall have the right, but not more than once during any twelve (12) month period, to make independent examinations or audits of all of Tenant's books, records and accounts which pertain to or show Gross Sales, or to have same made by an accountant or certified public accountants designated by Landlord. Such audits shall be limited to the determination of the Gross Sales as defined herein and shall be conducted at Tenant's home office during normal business hours and after reasonable prior notice. If the examination or audit shows that there has been a deficiency in the payment of percentage

rent Tenant shall immediately pay to Landlord the deficiency together with interest at the rate of twelve percent (12%) per annum from the date the payment should have been made. If, as a result of any audit of Tenant's records it is determined that Gross Sales are understated by more than three percent (3%), and if percentage rental is due to Landlord because of such understatement then, in addition to the payment provided for above, Tenant shall pay the reasonable cost and expenses incurred in connection with such audit. Any information gained from statements as herein provided or any examination or audit shall be confidential and shall not be disclosed except to carry out the purposes hereof, provided, however, that Landlord may disclose the contents of any such statements and/or audit in connection with any financing arrangements or assignment of Landlord's interest in the Leased Premises.

4. CONSTRUCTION AND CONDITION OF THE RETAIL STORE.

4.1 Condition of the Retail Store. As of the Commencement Date, all structural parts of the Retail Store and the Project including, without limitation, the foundation, roof, exterior walls, plumbing, electrical and other mechanical systems shall (a) meet and comply with all federal, state, and local laws, ordinances and regulations and all handicapped accessibility standards, including, without limitation, those promulgated under the Americans With Disabilities Act ("ADA"), and (b) shall be in good, workable and sanitary order, condition, and repair at the time of delivery of the Retail Store to Tenant. At such time as Landlord's work is completed, Landlord shall provide to Tenant a certificate executed by an officer of Landlord that shall represent and warrant that Landlord's work has been completed and that the Retail Store condition is in compliance with the requirement of Section 4.1 of the Lease (the "Certificate of Completion"). Landlord shall correct any latent defects promptly after Tenant notifies Landlord of any such defect. Landlord represents and warrants that it has disclosed to Tenant any conditions or restrictions within Landlord's actual knowledge that would adversely affect the design, construction and use of the Retail Store as contemplated by this Lease.

4.2 Landlord's Obligations. Landlord shall complete all items described on Exhibit C attached hereto and by this reference incorporated herein to this Lease ("Landlord's Work") at its sole cost and expense in a good and workmanlike manner before delivering the Retail Store to Tenant. Landlord shall work directly with a designated representative of the Tenant, in accordance with Exhibit C, to ensure that the "Retail Store" represents the retail building that the Landlord agreed to deliver and the Tenant agreed to accept.

If the structural elements, foundation, and roof of the Retail Store and the Project are not in the condition required under this Article then Tenant may, at its option, either (a) reject Landlord's Certificate of Completion and notify Landlord of such non-compliance; Landlord shall remedy such defects and provide Tenant with a replacement Certificate of Completion when the defects have been remedied; or (b) accept possession of the Retail Store and complete all work necessary to bring the Retail Store into the required condition. If Tenant elects to proceed under the foregoing subsection (b), then Landlord shall reimburse Tenant for the actual cost of such work, plus an administrative surcharge of fifteen percent (15%) to compensate Tenant for its employees' time, within thirty (30) days of receipt of an invoice for such sums. Tenant's and its contractor's determination of the cost of such work shall be final and binding on Landlord and Landlord acknowledges that Landlord can control the cost by performing the work under this Article in a timely manner. If Landlord does not reimburse Tenant as required by this Section, then in addition to any other remedies available to Tenant, Tenant may offset such sum against Gross Rent and all other charges until such sum has been fully recouped.

4.3 Tenant's Obligations. Tenant shall complete all items described on Exhibit D attached hereto and by this reference incorporated herein to this Lease ("Tenant's Work") at its sole cost and expense in a good and workmanlike manner. If Tenant has received the Termination Fee under the Royal

Termination Agreement (hereinafter defined), Tenant shall also have a conditional obligation to partially reimburse Landlord for Landlord's Work, as follows:

- a) The amount of reimbursement shall be ninety thousand dollars (\$90,000);
- b) The reimbursement shall be paid upon completion of Landlord's Work;
- c) If Tenant does not receive payment in full of the Ariel Option fee pursuant to the Option Agreement, Tenant's obligation to reimburse Landlord under this Section 4.3 shall be null, void and of no legal effect, but this shall have no effect on the other obligations of Landlord and Tenant under this Lease; and
- d) If for any reason whatsoever Landlord has not delivered the Retail Store or the Substitute Store to Tenant on or before October 1, 2006, Tenant's obligation to reimburse Landlord under this Section 4.3 shall be null, void and of no legal effect, but this shall have no effect on the other obligations of Landlord and Tenant under this Lease.

5. USE.

5.1 Use. Tenant may use and occupy the Retail Store for a coffee store and related uses including, but not limited to, at Tenant's discretion, the sale of (a) whole and ground coffee beans, (b) coffee by the cup, (c) espresso and espresso based drinks, (d) chilled and blended beverages, (e) tea and tea-based drinks, (f) baked goods, pastries, and breakfast items, (g) assorted salads, sandwiches and related lunch items, (h) candy, (i) smoothies, (j) ice-cream and ice-cream related products, (k) coffee and tea related equipment and supplies, (l) books, magazines and newspapers, (m) seasonal, promotional and tenant-branded merchandise, (n) miscellaneous incidental and related retail items, and (o) other items that tenant makes available for sale in the ordinary course of business at its other stores. Any other use requires Landlord's prior written consent which shall not be unreasonably withheld.

5.2 Compliance with Law. During the Term, Tenant, at its expense, shall comply promptly with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Retail Store pertaining to (a) the physical condition of any improvements constructed by Tenant in the Retail Store; and (b) Tenant's business operations in the Retail Store. Tenant shall not be required to make any seismic or structural upgrades, repairs, improvements or alterations to the Retail Store or the Project in order to comply with the requirements of this Section. Landlord, at its sole cost and expense, shall comply with all other laws, rules, regulations, and ordinances made by any governmental authority affecting the Retail Store, Project and/or the Property including, without limitation, all handicapped accessibility requirements, except for compliance issues arising from Tenant's alterations to the Retail Store.

5.3 Operations. Tenant shall operate its business in such manner and at such hours as Tenant considers proper in Tenant's business judgment, provided that Tenant shall, at a minimum, keep the store open during normal business hours on regular business days (Monday through Friday, excluding legal holidays).

5.4 Exclusivity. For the term of the Lease and extensions thereto, Landlord shall not use or allow any other person or entity (except Tenant and Tenant's affiliates) to use any portion of the Project or Property (whether the use is primary or incidental) for the sale of (a) freshly ground or whole coffee beans, (b) espresso or espresso-based coffee drinks, (c) gourmet, brand-identified brewed coffee (d) ice cream, milk shakes, smoothies or cold blended beverages, or (e) sandwiches, pastries, salads or related lunch items. This restriction shall also apply to kiosks and carts, or other similar businesses. From time to time, other tenants and guests to the Property may have one-time parties, one-time meetings or other one-time events on the Property (the "single use events") that may involve catering or other food service. Although

Landlord will reasonably encourage the hosts of such single use events to purchase coffee, beverages and other food items from Tenant, Landlord shall not be in violation of this Section 5.4 if such tenants and guests to the Property purchase coffee, beverages and other food items from sources other than Tenant for such single use events, and it shall not be a violation of this Section 5.4 if such tenants and guests charge a fee to the persons attending these single use events.

6. MAINTENANCE, REPAIRS, AND ALTERATIONS.

6.1 Tenant's Obligations. Subject to the provisions of Sections 6.2, 6.3 and 9, and except for damage caused by fire or other casualty, whether or not insured or insurable, Tenant, at Tenant's expense, shall keep the Retail Store in good order and repair, including interior lighting facilities, fixtures installed by Tenant and equipment within the Retail Store and the storefront, doors, and plate glass of the Retail Store. Notwithstanding any provision to the contrary, Tenant's obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant; or (c) any structural or seismic repairs, improvements or alterations to the Retail Store.

6.2 Landlord's Obligations. Except for repairs and replacements to the Retail Store that Tenant must make under Section 6.1, Landlord shall pay for and make all other repairs and/or replacements to the Retail Store and the Project (including the Common Areas, as defined below). Landlord shall, at its sole cost and expense, make the repairs and replacements necessary to maintain the Retail Store in a clean, safe, structurally sound condition comparable to other similar stores in the greater Seattle/Bellevue area. Landlord's repair, replacement and maintenance shall include the upkeep of the roof, foundation, exterior walls (including painting), interior structural walls, and all structural components of the Retail Store. Landlord shall also repair and maintain all parking areas, sidewalks, landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems (but not plumbing fixtures) which serve the Retail Store. Landlord shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and storefronts (except where maintenance of the same is caused by Landlord's negligence or failure to perform its obligations under this Section). Landlord shall make all repairs under this Section promptly after Landlord learns of the need for such repairs but in any event within thirty (30) days after Tenant notifies Landlord of the need for such repairs. If Landlord fails to make such repairs within thirty (30) days after Tenant's notice (except when the repairs require more than thirty (30) days for performance and Landlord commences the repair within thirty (30) days and diligently pursues the repair to completion), Tenant may, at its option, undertake such repairs and deduct the cost thereof from the installments of Gross Rent and Percentage Rent next falling due. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately, Tenant may immediately undertake such repairs and deduct the cost thereof from the installments of Gross Rent and all other charges next falling due.

6.3 Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Retail Store to Landlord in broom clean condition, except for ordinary wear and tear and damage caused by fire or other casualty, whether or not insured or insurable.

6.4 Landlord's Rights. If Tenant fails to perform Tenant's obligations under this Article, Landlord may, but shall not be required to, enter upon the Retail Store, after thirty (30) days prior written notice to Tenant, or with no prior written notice in an emergency (in which case Landlord shall provide written notice and explanation to Tenant on the next business day), and put the same in good order, condition and repair, and the reasonable costs thereof shall become due and payable as additional rental to Landlord

together with Tenant's next Gross Rent installment falling due after Tenant's receipt of an invoice for such costs. Notwithstanding the foregoing, Landlord's rights under this Section shall be subject to Section 20.14.

6.5 Alterations and Additions.

6.5.1 Initial Improvements. Landlord at Landlord's sole cost and expense (other than reimbursement by Tenant as provided herein) shall complete "Landlord's Work" in accordance with Exhibit C. Tenant, at Tenant's sole cost and expense, shall complete such initial tenant improvements in the Retail Store as Tenant deems necessary or desirable for the conduct of Tenant's business therein including Tenant's Work as set forth in Exhibit D attached hereto (the "Initial Improvements"). Tenant shall submit any plans and specifications for the Initial Improvements to Landlord for Landlord's review and consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall be deemed to have approved any improvement proposed by Tenant unless Landlord disapproves of Tenant's proposal in writing within seven (7) business days of receiving Tenant's written proposal and request for consent.

6.5.2 Subsequent Improvements. After the installation of the Initial Improvements, Tenant may make such interior non-structural alterations, improvements and additions to the Retail Store including, without limitation, changing color schemes, installing new countertops, flooring, wall-covering and modifying the layout of the tenant fixtures, as Tenant deems necessary or desirable without obtaining Landlord's consent. Notwithstanding the foregoing, Tenant shall not make any alterations, improvements, additions or repairs in, on, or about the Retail Store which affect the structure or the mechanical systems of the Retail Store without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall be deemed to have approved any subsequent improvement proposed by Tenant unless Landlord disapproves of Tenant's proposal in writing within seven (7) business days of receiving Tenant's written proposal and request for consent.

6.5.3 Liens. Tenant shall not permit any mechanics' or materialmen's liens to be levied against the Retail Store for any labor or material furnished to Tenant or to its agents or contractors; provided, however, that Tenant shall not be required to pay or otherwise satisfy any claims or discharge such liens so long as Tenant, in good faith and at its own expense, contests the same or the validity thereof by appropriate proceedings and posts a bond or takes other steps acceptable to Landlord that stay enforcement of such lien. For purposes of this section, Landlord's Work shall not be considered to be labor or material furnished to Tenant or its agents or contractors.

6.6 Ownership and Removal of Improvements, Fixtures, Equipment and Furnishings.

6.6.1 All personal property, furnishings, machinery, trade fixtures, equipment and improvements (trade or otherwise) either located in the Retail Store as of the Commencement Date or which Tenant installs in the Retail Store ("Tenant's Property") shall remain the property of Tenant. Upon the termination or expiration of the Term, Tenant may remove Tenant's Property from the Retail Store no later than the termination or expiration date. In addition, Tenant may remove from the Retail Store all items and structural characteristics installed by Tenant that are indicative of Tenant's business and may otherwise "de-identify" the Retail Store, as Tenant reasonably believes necessary or appropriate for the protection of Tenant's interest in Tenant's trademarks, trade names or copyrights. Tenant shall repair any damage to the Retail Store or the Project caused by such removal, including patching and filling holes. In no event shall Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems.

6.6.2 Any of Tenant's Property not removed from the Retail Store on the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may

possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Retail Store (a) any trademark, trade name, millwork, floor plan, color palette, or sign used by Tenant in the Retail Store; or (b) any item that is similar to any other item protected by Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Tenant under this Lease.

7. INSURANCE; INDEMNITY.

7.1 Tenant's Insurance. During the Term of this Lease, Tenant shall obtain and keep in full force and effect, the following insurance from an insurance company rated A-VIII or better in Best's Insurance Reports that may be provided under blanket insurance policies covering other properties as well as the Retail Store. Upon Landlord's request, Tenant will provide Landlord with a certificate(s) evidencing such insurance. Landlord shall be named an additional insured on Tenant's insurance.

7.1.1 Liability Insurance. Personal injury, bodily injury and property damage insurance, naming Landlord as an additional insured as its interest may appear from time to time, against liability arising out of Tenant's use, occupancy, or maintenance of the Retail Store and Tenant's outdoor seating area. Such insurance shall provide coverage for and shall be in an amount of not less than One Million Dollars (\$1,000,000) for injury to or death of one person in any one accident or occurrence and in an amount of not less than Two Million Dollars (\$2,000,000) for injury to or death of more than one person in any one accident or occurrence. Tenant's insurance shall be primary with respect to any claim arising out of events that occur in the Retail Store.

7.1.2 Property Insurance. Commercial property form insurance with a special form endorsement in the amount of the full replacement value of Tenant's fixtures, equipment and inventory in the Retail Store. During the Term, Tenant shall use the proceeds from any such policy or policies of insurance for the repair or replacement of the insured property unless Tenant elects to terminate the Lease under Section 9 hereof. Landlord shall have no interest in any insurance proceeds Tenant receives for Tenant's Property and Landlord shall sign all documents that are necessary or appropriate in connection with the settlement of any claim or loss by Tenant. Tenant's policies shall not be contributing with or in excess of any coverage which Landlord shall carry on the Project.

7.2 Landlord's Insurance. During the Term of his Lease, Landlord shall obtain and keep in full force and effect, the following insurance from an insurance company rated A-VIII or better in Best's Insurance Reports. The insurance required to be carried by Landlord under this Section shall be referred to herein as "Landlord's Insurance." Upon Tenant's request, Landlord will provide Tenant with a copy of the certificate evidencing Landlord's Insurance.

7.2.1 Liability Insurance. Bodily injury, personal injury and property damage insurance (to include without limitation contractual liability covering Landlord's obligations under Section 7.5) insuring against claims of bodily injury or death, personal injury or property damage arising out of or in connection with (a) Landlord's activities upon, in or about the Retail Store; or (b) the use or occupancy of the Project in a limit of not less than One Million Dollars (\$1,000,000) for injury to or death of one person in any one accident or occurrence and in an amount of not less than Two Million Dollars (\$2,000,000) for injury to or death of more than one person in any one accident or occurrence. Landlord's Insurance shall be primary with respect to any claim arising out of events that occur outside the Retail Store.

7.2.2 Property Insurance. Commercial property form insurance insuring the Project (excluding any property which Tenant is obligated to insure under Section 7.1), against damage and destruction by fire, vandalism, and other perils in the amount of the full replacement value of the Retail Store, as such value may exist from time to time.

7.2.3 Earthquake Insurance. During any period in which Landlord is required to provide earthquake insurance for the Tully's Premises under Section 16 of the Tully's Brewery Lease, Landlord shall also provide earthquake insurance coverage for the Retail Store, in the amount of one hundred percent (100%) full replacement value of the Retail Store building including Landlord's work.

7.3 Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any Project, structure or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Lease. Landlord and Tenant shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

7.4 Indemnification by Tenant. Tenant shall defend, indemnify, and hold Landlord and Landlord's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising in connection with any and all third party claims arising out of (a) injuries occurring within the Retail Store; (b) any intentional acts or negligence of Tenant or Tenant's agents, employees, or contractors; (c) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease; or (d) the failure of any representation or warranty made by Tenant herein to be true when made. This indemnity does not include the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

7.5 Indemnification by Landlord. Landlord shall defend, indemnify, and hold Tenant and Tenant's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) by or on behalf of any person, entity, or governmental authority occasioned by or arising out of (a) injuries occurring in the Common Areas or any other portion of the Project outside the Retail Store, other than the Tully's Premises (during the term of the Tully's Brewery Lease); (b) any intentional act, or negligence of Landlord or Landlord's agents, employees, or independent contractors; (c) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease; or (d) the failure of any representation or warranty made by Landlord herein to be true when made. This indemnity does not include the intentional or negligent acts or omissions of Tenant or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of the Lease.

8. ENVIRONMENTAL LIABILITY.

8.1 Environmental Law. The term "Environmental Law" means any federal, state local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

8.2 Hazardous Substance. The term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or common law decision including, without limitation, chlorinated solvents; petroleum products or by-products; asbestos; and polychlorinated biphenyl.

8.3 Landlord's Covenants. Landlord warrants, represents, covenants and agrees as follows:

8.3.1 To the best of Landlord's knowledge, no Hazardous Substance is currently on the Project or the Property (or off-site of the Property which might affect the Retail Store or the Project), except for such Hazardous Substances that are identified on Exhibit F attached hereto, which are not in violation of any Environmental Law.

8.3.2 Landlord shall require each of its employees, agents, contractors, subcontractors, tenants, subtenants, or any other party over whom Landlord has supervision or control or right of the same to comply with all applicable Environmental Laws.

8.3.3 To the best of Landlord's knowledge, there are no underground storage tanks on the Property, and no underground storage tanks have been removed from the Property. There shall be no asbestos or asbestos containing material in or on the Retail Store. To the best of Landlord's knowledge, no facilities involving the manufacture or disposal of any Hazardous Substance or the use or storage of more than five hundred (500) gallons of any Hazardous Substance per year, including, without limitation, gasoline stations, automobile repair facilities, dry cleaners, photo developing laboratories, junkyards, landfills, waste treatment storage, disposal, processing or recycling facilities have been located on the Property.

8.3.4 Landlord shall give prompt notice to Tenant of: (a) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Retail Store or the Project (or off-site of the Retail Store that might affect the Retail Store) or related to any loss or injury that might result from any Hazardous Substance; (b) all claims made or threatened by any third party against Landlord or the Retail Store, the Project or the Property relating to any loss or injury resulting from any Hazardous Substance; and (c) Landlord's discovery of any occurrence or condition on the Retail Store, the Project or the Property (or off-site of the Property that might affect the Retail Store) that could cause the Retail Store or any part thereof, to be subject to any restriction on occupancy or use of the Retail Store under any Environmental Law.

8.3.5 If any Hazardous Substance is deposited, released, stored, disposed, discovered or present in or on the Retail Store, the Project or the Property, Landlord, at Landlord's expense, shall (subject to Tenant's obligations set forth in Section 8.5.1) in a manner that complies with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Substances. Landlord shall use its best efforts to minimize direct and indirect impact on Tenant during all activities related to remediation. If any asbestos is discovered in the Retail Store during any Tenant construction, improvement, or renovation of the Retail Store, then Landlord shall promptly remove the asbestos or cause it to be removed at Landlord's sole cost and expense. If such removal delays the construction or installation of Tenant's improvements or otherwise interferes with Tenant's use of the Retail Store to the extent that Tenant is forced to cease operations at the Retail Store, Gross Rent and all other charges payable by Tenant hereunder shall abate until the interference ceases.

8.4 Tenant's Use of Any Hazardous Substance. The only Hazardous Substances Tenant may use in its operations are cleaning products, and refrigerants contained in or utilized by equipment. Tenant will manage such use in accordance with the Environmental Laws. Other than using the foregoing cleaning products and refrigerants, Tenant does not have direct or indirect responsibility for or authority to manage or control use, transportation, generation or disposal of any Hazardous Substance at the Retail Store.

8.5 Indemnities.

8.5.1 Tenant shall protect, indemnify, and hold harmless Landlord and Landlord's employees, agents, parents, and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Retail Store to the physical condition existing prior to undertaking any activity related to any Hazardous Substance ("Claims") directly arising out of or attributable to Tenant or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Retail Store. This indemnity shall survive the termination of this Lease.

8.5.2 Landlord shall protect, indemnify, and hold harmless Tenant and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any Claims directly or indirectly related to: (a) a violation of or responsibility under Environmental Laws except that if such Claims are directly related to Tenant, or Tenant's agents, contractors or employees use, manufacture, storage, release or disposal of a Hazardous Substance at the Retail Store; (b) a breach of any representation, warranty, covenant or agreement contained in this Article. This indemnity shall survive the termination of this Lease. In the event of any governmental or court order concerning Hazardous Substances on the Retail Store, the Project or the Property (not caused by Tenant) that precludes Tenant from reasonable operation of its business at the Retail Store, Tenant may cease operating and any Rent and all other charges shall be abated. If such governmental or court order is not resolved within six (6) months, Tenant may terminate this Lease.

9. DAMAGE OR DESTRUCTION.

9.1 Material Damage. If the Retail Store is damaged or destroyed by fire or any casualty or any other portion of the Property is damaged or destroyed by fire or other casualty and such damage or destruction materially diminishes Tenant's access or use of the Retail Store, which cannot, despite diligent, good faith efforts be repaired or restored within one hundred eighty (180) days following the date on which such damage occurs, then Tenant may elect to terminate the Lease effective as of the date of such damage or destruction. Within thirty (30) days after the date of such damage, the parties shall determine how long the repair and restoration will take. After that determination has been made, Tenant shall have a period of thirty (30) days to terminate the Lease by giving written notice to Landlord; if the parties determined that it will require more than one hundred eighty (180) days to repair or restore the Retail Store.

9.2 Repair After Damage. If Tenant does not give notice of Tenant's election to terminate as provided in Section 9.1, then Landlord shall, subject to the provisions of this Section, immediately commence and diligently pursue to completion the repair of such damage so that the Retail Store or Property are restored to a condition of similar quality, character and utility for Tenant's purposes, including restoration of all items described on Exhibit C existing in the Property prior to such damage. Notwithstanding anything contained herein to the contrary, if the Retail Store or the Property are not repaired and restored within one hundred eighty (180) days from the date of the damage, Tenant may thereafter cancel the Lease at any time before Landlord completes the repairs and delivers the restored Retail Store to Tenant unless Landlord has substantially completed the repair or restoration and will be finished within thirty (30) days thereafter. If Tenant does not so terminate, Landlord shall continue to restore the Retail Store or Property. In the event of termination, Landlord shall return any prepaid Gross Rent and other prepaid amounts to Tenant within thirty (30) days from the date of termination of the Lease.

9.3 Uninsured Damage. If material damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, either Landlord or Tenant may terminate this Lease by thirty (30) days written notice to the other of its election so to do and the

Lease shall be deemed to have terminated as of such date unless the other party agrees in writing to pay for such repairs or restoration.

9.4 Damage During Final Two Years. If any structural damage or destruction occurs to the Retail Store during the last two (2) years of the Initial Term or any Extension Term and the portion of the cost to repair the damage that is not covered by insurance exceeds \$50,000, either Landlord or Tenant may terminate the Lease upon giving the other party (30) days written notice; provided, however, that if Landlord notifies Tenant that it wishes to terminate the Lease, then Tenant may, if it has not already done so, exercise its right to extend the term of the Lease under Section 2.4 whereupon Landlord's election to terminate shall be null and void.

9.5 Abatement of Rent. If Landlord is required to repair or restore the Retail Store and/or the Property under any provision of this Article and Tenant's use of the Retail Store is affected, then until Landlord completes such repair or restoration, Gross Rent and all other charges payable by Tenant hereunder, other than percentage rent as set forth in Section 3.2 herein, shall abate based on the degree of impact such damage and repairs have on Tenant's operations within the Retail Store as measured by the proportionate reduction in either (at Tenant's election) Tenant's sales volume or the number of Tenant's customers.

10. PROPERTY TAXES.

10.1 Definition of "Real Property Taxes". For purposes of this Lease, the phrase "Real Property Taxes" shall include general real estate taxes and assessments payable with respect to the Property that are imposed by any authority having the power to tax any legal or equitable interest of Landlord in the Property; provided, however, that assessments shall be prorated and divided into the maximum number of installments permitted by law and only the current portion shall be included in Real Property Taxes for any Lease Year. Notwithstanding the foregoing, Real Property Taxes shall not include (a) any inheritance, estate, succession, transfer, gift, franchise, or capital stock tax; (b) any income taxes arising out of or related to ownership and operation of income-producing real estate; (c) any excise taxes imposed upon Landlord based upon gross or net rentals or other income received by it; or (d) assessments for improvements completed prior to the Commencement Date.

10.2 Payment of Real Property Taxes. As of the Commencement Date, Landlord represents and warrants that (a) Landlord has paid in full all currently due Real Property Taxes, and (b) Landlord shall pay when due all future Real Property Taxes. Tenant shall not be required to compensate or reimburse Landlord for any Real Property Taxes related to the Retail Store.

10.3 Personal Property Taxes. Tenant shall pay, prior to delinquency, all personal property taxes assessed against Tenant directly and applicable to personal property located in the Retail Store.

11. UTILITIES. Landlord shall pay for all water/sewer used by Tenant during the Term, all of which shall be measured through proper and sufficient meters. Landlord shall be responsible, and make direct payment to the vendor, for the entire cost of trash removal and disposal services related to the Retail Store. Electricity shall be separately metered and paid directly by Tenant and Tenant shall directly pay for telephone service and computer network services for the Retail Store.

12. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease and shall not let or sublet the whole or any portion of the Retail Store without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Tenant may, without Landlord's consent, assign or sublet all or any portion of the Retail Store or assign the Lease to: (a) a parent, subsidiary, affiliate, division or corporation controlling, controlled by or under common

control with Tenant; (b) a successor corporation related to Tenant by merger, consolidation, reorganization or government action; (c) a licensee or franchisee of Tenant; or (d) a purchaser of substantially all of Tenant's tangible property in the Retail Store, provided that, as of the date of such transfer, the purchaser reasonably has the financial ability to perform its obligations (in Landlord's reasonable business judgment) with respect to this Lease and/or the Retail Store, and the purchaser has substantial restaurant experience (each of the foregoing is a "Permitted Transfer"). For the purpose of this Lease, any sale or transfer of Tenant's capital stock, redemption or issuance of additional stock of any class shall not be deemed an assignment, subletting or any other transfer of the Lease or the Retail Store. Landlord shall not be entitled to any consideration in connection with any assignment or sublet. If Landlord's consent is required for an assignment or sublease, then Landlord's consent shall be deemed to have been given unless Landlord notifies Tenant in writing of the reasons for Landlord's disapproval within fourteen (14) days of receipt of the request. Unless released in writing, Tenant shall remain secondarily liable under the Lease following any assignment or sublease other than a Permitted Transfer; provided, however, that Tenant's obligations may not be enlarged or extended by any act or agreement of any assignee or subtenant. The assigning party's liability under the Lease shall terminate automatically if the Landlord fails to provide such party with a copy of all default notices to the assignee or subtenant.

13. DEFAULTS; REMEDIES.

13.1 Tenant's Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) The failure by Tenant to make any payment of Gross Rent, Percentage Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) business days after Landlord notifies Tenant in writing of such failure; or

(b) The failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, other than the payment of sums due hereunder, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

13.2 Remedies in Default. In the event of any such uncured default, Landlord may, in accordance with procedures required by law, pursue one of the following remedies:

(a) Landlord may terminate Tenant's right to possession of the Retail Store by any lawful means, in which case this Lease shall terminate and Tenant shall surrender possession of the Retail Store to Landlord within thirty (30) days after written notice from Landlord to Tenant. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Retail Store, expenses of reletting, including necessary renovation and alteration of the Retail Store for uses similar to Tenant's uses, and the Gross Rent and any additional rental charge as it becomes due hereunder. If Landlord relets the Retail Store, then any rent or other concessions given to the new tenant shall be prorated evenly throughout the entire term of the new lease; or

(b) Landlord may maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Retail Store. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease including the right to recover the Gross Rent and any additional rental charge as it becomes due hereunder.

With respect to any remedy exercised by Landlord, Landlord shall have an affirmative obligation to obtain another tenant for the Retail Store at a fair market rental and to otherwise mitigate its damages.

13.3 Landlord Defaults and Remedies. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Landlord: (a) Landlord's failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease required to be done, observed, kept or performed by Landlord, within thirty (30) days after written notice by Tenant to Landlord of said failure (except when the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion); or (b) the failure of any representation or warranty to be true when deemed given hereunder. In the event of a default by Landlord, Tenant, at its option, without further notice or demand, shall have the right to any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity or elsewhere herein: (a) to remedy such default or breach and deduct the costs thereof (including attorneys' fees) from the installments of Gross Rent next falling due; (b) to pursue the remedy of specific performance; and (c) to seek money damages for loss arising from Landlord's failure to discharge its obligations under the Lease. If Landlord's default materially impairs Tenant's ability to conduct its business in the Retail Store and Tenant is unable to pursue one of the other remedies set forth in this paragraph then Tenant shall additionally have the right to terminate the Lease. Nothing herein contained shall relieve Landlord from its obligations hereunder, nor shall this Section be construed to obligate Tenant to perform Landlord's repair obligations.

14 CONDEMNATION.

14.1 Condemnation of Retail Store. If any portion of the Retail Store is taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of said power (the act of which is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession of the condemned portion of the Retail Store (the "Condemnation Date"). If the entire Retail Store is condemned, then the Lease shall automatically terminate as of the Condemnation Date. The party who receives the condemnor's notice of intention to take (the "Condemnation Notice") shall immediately give a copy of such notice to the other party.

14.2 Condemnation of the Property. If as a result of any condemnation of the Property or any portion thereof (even though the Retail Store is not physically affected) (a) the Retail Store is no longer reasonably suited for the conduct of Tenant's usual business in Tenant's reasonable business judgment, or (b) the number of parking spaces on the Property located within fifty (50) feet of the Retail Store is reduced by more than two (2) spaces and Landlord does not provide alternative equally accessible parking, then Tenant may terminate this Lease at any time after Tenant receives the Condemnation Notice by giving Landlord thirty (30) days written notice.

14.3 Condemnation of the Project. If a condemnation of any portion of the Project (even though the Retail Store is not physically affected) results in termination of the Tully's Brewery Lease by either the lessor or lessee under Section 19 of the Tully's Brewery Lease, then Tenant may terminate this Lease by giving Landlord the other at least thirty (30) days written notice.

14.4 Restoration. If this Lease is not terminated as to the whole Retail Store, (a) it shall remain in full force and effect as to the portion of the Retail Store remaining, provided the Gross Rent and all other charges payable hereunder, other than percentage rent as provided in Section 3.2 herein, shall be reduced in the same proportion that the area taken bears to the total area of the Retail Store prior to taking, and (b) Landlord shall use the condemnation award to restore the Retail Store and the Project as soon as reasonably possible to a complete unit of the same quality, character and utility for Tenant's purposes.

existing prior to the condemnation. Notwithstanding anything contained herein to the contrary, if the restoration of the Retail Store and/or the Project is not commenced within thirty (30) days of Landlord's receipt of the condemnation award or is not completed within one hundred eighty (180) days from the Condemnation Date, then Tenant may cancel the Lease at any time before Landlord completes the restoration. If this Lease is terminated, Landlord shall return any deposits, all prepaid Gross Rent and other prepaid sums to Tenant within thirty (30) days of the date of termination of the Lease.

14.5 Award. Landlord and Tenant may each pursue any condemnation award to which it is entitled by applicable law. Tenant may recover from the condemning authority or from Landlord (if Tenant can show that such amount was included in Landlord's award) that portion of any net award or payment attributable to Tenant's Property, including without limitation, the unamortized value of improvements installed in the Retail Store by Tenant at Tenant's expense based on straight-line depreciation over the Initial Term of the Lease without regard to the condemnation. For the purposes of this Section, a "net" award or payment shall mean the entire award or payment for such taking, less the actual and reasonable expenses incurred in collecting such award or payment.

15. SIGNAGE. Tenant, at its cost, shall have the right to install or place signs, awnings, or other advertising materials in or about the Retail Store (including a free-standing pylon sign on the property) up to the Retail Store's pro rata share of the maximum signage permitted for the Property as a whole as permitted by applicable law. Landlord shall not allow any signage other than Tenant's to be erected on the exterior walls of the Retail Store. Any pylon signs shall include other tenants of the Property as determined by Landlord provided that Tenant shall be entitled to the top position on each such pylon sign erected by Tenant. Landlord shall cooperate with Tenant, at Tenant's cost, in obtaining the maximum signage allowed per applicable zoning regulations, including awnings and Tenant logo package. Signs and awnings shall be in compliance with the municipal sign code.

16. OUTDOOR SEATING. If such seating is permitted by the local authorities, Tenant may provide outdoor seating for its customers, whether or not such seating is on property owned by Landlord adjacent to the Retail Store, as long as it does not interfere with Landlord's use of the Property from time to time, at any time during the Term of this Lease at no additional rental. Tenant, at its cost, shall comply with all relevant state, municipal or local laws, regulations, rules or ordinances with respect to outdoor seating, and obtain all necessary permits or license for the same.

17. TENANT'S USE OF COMMON AREAS. Tenant shall have the right to use any and all appurtenances and easements benefiting the Retail Store and the Property, along with sufficient Common Areas to support its intended use of the Retail Store. In addition to the foregoing, Tenant shall have the right of access to such portions of the Property outside the Retail Store as are necessary to enable Tenant to exercise its rights under this Lease. Any changes, additions or alterations to the Retail Store, the Property or the Project shall not (a) impair access to, visibility of or frontage of the Retail Store; (b) materially affect the conduct of Tenant's customary business therein; or (c) detract from Tenant's signage, create confusion regarding the business conducted in the Retail Store, or adversely affect the presentation of Tenant's exterior signage and storefront; or (d) reduce the number or size, or otherwise adversely alter the parking spaces designated for Tenant and Tenant's customers exclusive use. In the event of any such interference, the Gross Rent shall be equitably abated based on the degree of interference with Tenant's business.

18. PARKING AND ACCESS. Tenant shall have the non-exclusive right to use all parking areas located on the Property, subject to the rights of other tenants of the Property from time to time; provided that Landlord's granting of exclusive parking rights to other tenants on the Property shall not materially affect Tenant's business operations. A total of five parking spaces (or such greater number as may be required for compliance with applicable codes and regulations) shall be designated for Tenant and

Tenant's customers "exclusive" use. At all times during the term of this Lease, Tenant shall have the right to unobstructed access to the Retail Store.

19. **TENANT'S RIGHT TO PURCHASE.** Tenant shall have a right of first refusal to purchase the Retail Store, in the event that Landlord offers the Retail Store for sale to a third-party, as a separate property, not as part of the sale of the Property, upon materially the same terms and conditions offered to such third-party. Tenant shall have 30 days, after receipt of written notice from the Landlord, to review the negotiated business terms of the Purchase and Sale agreement and either accept or decline the right to purchase the Retail Store on those terms.

20. **GENERAL PROVISIONS.**

20.1 **Estoppel Certificate.** Tenant shall, no more than once in any Lease Year and upon not less than thirty (30) days prior written notice from Landlord, execute, acknowledge and delivery to any prospective purchaser or mortgagee, or to Landlord on such party's behalf a statement in writing on Tenant's standard form or on such other form as is acceptable to Tenant, (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) stating the date to which the Gross Rent and other charges are paid and the amount of any security deposit held by Landlord, if any; and (c) acknowledging that there are not, to the actual knowledge of the person executing such certificate, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Retail Store. Such certificates shall not affect, prejudice or waive any rights or remedies of Tenant against Landlord. Landlord shall execute, acknowledge and deliver to a statement containing the information described above (except that Landlord shall certify with respect to uncured defaults on the part of *Tenant*) and addressed to such party as Tenant may specify upon not less than thirty (30) days prior written notice from Tenant.

20.2 **Landlord's Interests.** Landlord represents and warrants to Tenant that as of the Commencement Date, (a) Landlord owns and holds fee title in and to the Retail Store and the Property; (b) the real property identified on Exhibit A contains the Retail Store described in Section 1; and (c) there are no encumbrances, liens, agreements, covenants, in effect that would limit Tenant's rights hereunder. The term "Landlord" as used herein shall mean only the owner or owners, at the time in question, of the fee title (or a tenant's interest in a ground lease) of the Retail Store. In the event of an assignment or transfer of this Lease by Landlord for other than security purposes, Landlord shall cause its assignee or transferee to assume the provisions of this Lease and Landlord shall deliver notice of such assignment or transfer and a copy of the effective instrument of transfer to Tenant within fifteen (15) days after the date of transfer. Tenant shall be entitled to continue to pay rent and give all notices to Landlord until Tenant has received the foregoing from Landlord. Landlord shall deliver all funds in which Tenant has an interest, including but not limited to Tenant's security deposit, if any, to Landlord's purchaser or assignee. From and after a sale of the Retail Store or the Property, Landlord shall be released from all liability toward Tenant arising from this Lease because of any act, occurrence or omission of Landlord's successors occurring after the transfer of Landlord's interest in this Lease, provided Landlord's purchaser or assignee expressly assumes Landlord's duties and covenants under this Lease. Nothing herein shall be deemed to relieve Landlord of any liability for its acts, omissions or obligations occurring or accruing up to and including the date of such transfer.

20.3 **Authority.** Each of Landlord and Tenant hereby represents and warrants that this Lease has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

20.4 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

20.5 Time of Essence. Time is of the essence to the parties executing this Lease.

20.6 Headings. Article and section headings are not a part hereof and shall not be used to interpret the meaning of this Lease.

20.7 Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties as of the date hereof with respect to any matter mentioned herein. No prior agreement, correspondence or understanding pertaining to any such matter shall be effective to interpret or modify the terms hereof. This Lease may be modified only in writing, signed by the parties in interest, at the time of the modification. Landlord specifically acknowledges that Tenant's employees at the Retail Store do not have authority to modify the Lease or to waive Tenant's rights hereunder.

20.8 Waivers. No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision. A party's consent to or approval of any act shall not be deemed consent or approval for any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of Landlord or Tenant by the person to whom notices are to be addressed.

20.9 Recording. Landlord or Tenant may record a short form or memorandum of Lease at its own expense. At Tenant's request, the parties shall execute a memorandum of Lease in recordable form giving notice of such nonmonetary terms as Tenant may reasonably request, including Tenant's exclusivity and option rights. If Tenant exercises such option, upon termination or expiration of the Lease, Tenant shall, at its sole expense, remove such recorded memorandum from title records.

20.10 Holding Over. If Tenant remains in possession of the Retail Store or any part thereof after the expiration of the Term, with or without the consent of Landlord, such occupancy shall be a tenancy from month-to-month at the same rental rate payable in the last month of the Term, plus all other charges payable hereunder, and upon the terms hereof applicable to month-to-month tenancies.

20.11 Cumulative Remedies. Except where otherwise expressly provided in this lease, no remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.12 Binding Effect; Choice of Law. The Lease shall be binding upon and benefit the parties, their personal representatives, successors and assigns. The Lease shall be governed by the laws of the State of Washington.

20.13 Subordination, Nondisturbance and Attornment. This Lease shall be subordinate to all existing and future mortgages and/or deeds of trust on the Retail Store, the Project or the Property, and Tenant agrees to subordinate this lease to any future mortgage or deed of trust and to attorn to Landlord's successor following any foreclosure, sale or transfer in lieu thereof; provided that the mortgagee, transferee, purchaser, lessor or beneficiary ("Landlord's Successor") agrees in a written instrument in form and substance satisfactory to Tenant that Tenant's use or possession of the Retail Store shall not be disturbed, nor shall its obligations be enlarged or its rights be abridged hereunder by reason of any such transaction. Notwithstanding any foreclosure or sale under any mortgage or deed of trust (or transfer by deed in lieu thereof), this Lease shall remain in full force and effect.

20.14 Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Retail Store upon seventy-two (72) hours prior written notice for the purpose of inspecting the same, showing the same to prospective purchasers or lenders, and making such alterations, repairs, improvements, or additions to the Retail Store or to the Project as Landlord deems necessary or desirable. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Retail Store, Landlord may give Tenant shorter notice in any manner that is practicable under the circumstances. Landlord may at any time during the last sixty (60) days of the Term, place on or about the Retail Store an ordinary "For Lease" sign. Any such sign shall be no larger than two feet by two feet (2' x 2'). When entering or performing any repair or other work in the Retail Store, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Tenant's personnel immediately upon entering the Retail Store, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Tenant's use, business or operations on the Retail Store or obstruct the visibility of or access to the Retail Store. In the event of substantial, material or unreasonable interference, the Rent shall be equitably abated if the interference continues for more than twenty four (24) hours. In the event such interference shall continue for longer than six (6) months, Tenant shall have the option to terminate the Lease or continue to operate with rent abatement after such interruption has ceased for a time period equal to the time period of such interruption.

20.15 Only Landlord/Tenant Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant. Landlord and Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

20.16 Attorneys' Fees. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

20.17 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Lease to be performed by such party, and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God, the performance of such covenant, agreement, work, service, or other act shall be excused for the period of delay and the time period for performance shall be extended by the same number of days in the period of delay.

20.18 Confidentiality of Lease. From and after the date lease negotiations were entered into and throughout the Term of this Lease, the parties shall not disclose any of the terms, covenants, conditions or agreements set forth in this Lease or any amendments hereto, nor provide this Lease, any amendments hereto or any copies of either of the same to any person including, without limitation, any brokers, any other tenants in the Project any affiliates, agents or employees of such tenants or brokers except as set forth herein. Landlord hereby acknowledges that the disclosure of any of the terms, covenants, conditions and agreements set forth in this Lease, or any amendment hereto, to any third party would cause material damage to Tenant, and Landlord agrees to indemnify, save and hold Tenant harmless from and against any and all damages suffered by Tenant which are attributable to any disclosure by Landlord in violation of the terms of this provision. Notwithstanding the foregoing, Landlord may disclose the terms of this Lease to any current or potential mortgagee or purchaser of the Property, and any of Landlord's accountants, attorney and bankers, who agrees to be bound by the terms of this Section. Landlord and Tenant shall be permitted to provide their respective insurance brokers, agencies and representatives with those sections of the Lease that are relevant for the purposes related to insurance coverage and awards.

20.19 Brokers. Landlord and Tenant have not dealt with any broker in connection with this Lease. Except as specifically identified in this Section, Landlord and Tenant each represent to the other that they have not dealt, directly or indirectly, in connection with the leasing of the Retail Store, with any other broker or person entitled to claim a commission or leasing fees. Landlord and Tenant each shall indemnify and hold each other harmless from any loss, liability, damage, or expense (including without limitation reasonable attorneys' fees) arising from any claim for a commission or leasing fee arising out of this transaction made by any unidentified broker or other person with whom such party has dealt.

20.20 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, that party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise.

20.21 Late Charges. Tenant shall pay a late charge of five percent (5%) of the Gross Rent or Percentage Rent due in the event that Tenant fails to make any payment of rentals, costs, additional rentals or other charges within ten (10) days of the due date; provided, however, that no late charge shall be payable for the first two (2) late payments in each calendar year provided the payments are received by Landlord within five (5) days after written notice from Landlord that such payment is due. If Tenant shall fail to make any payment of rentals, costs, additional rentals or other charges within ten (10) days after written notice given after the date when due as provided in this Lease, then such sums shall bear interest at the rate of twelve percent (12%) per annum calculated from said due date.

21. QUIET ENJOYMENT. Without limiting any rights Tenant may have by statute or common law, Landlord covenants and agrees that, so long as this Lease is in full force and effect, Tenant shall lawfully and quietly hold, occupy and enjoy the Retail Store during the Term of this Lease without disturbance by Landlord or by any person having title paramount to Landlord's title or by any person claiming through or under Landlord.

22. NOTICES. Whenever a provision is made under this Lease for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either personally, by national overnight delivery service, or sent by United States mail, certified, postage prepaid, addressed at the addresses set forth below or at such address as either party may advise the other in writing from time to time.

To Landlord at:

Rainier Commons LLC
1420 Fifth Ave., Suite 2625
Seattle, WA 98101

With a copy to:

Philip Roberts
Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, WA 98101

To Tenant at:

Tully's Coffee Corporation
3100 Airport Way South
Seattle, WA 98134
Attn: President

With a copy to:

Carney Badley Spellman
700 Fifth Avenue, Suite 5800
Seattle, WA 98104

Notices given hereunder shall be deemed to have been given on the date of personal delivery (or the first business day thereafter if delivered on a non-business day), on the date of delivery by overnight delivery service (or the first business day thereafter if delivered on a non-business day), or three (3) business days after the date of mailing.

23. CONTINGENCIES. This Lease is contingent upon each of the following conditions, and shall otherwise be null and void:

23.1 This Lease is contingent upon Tenant obtaining all necessary licenses and permits to operate a retail coffee business, including the drive through, at the Retail Store.

23.2 This Lease is contingent upon the execution by Tenant and Ariel Development, Inc. ("Ariel") of the Agreement to Terminate Sublease (the "Royal Termination Agreement") relating to that certain Sublease dated February 8, 1996 (the "Sublease"), for certain retail property at 1046 First Avenue South, Seattle, WA (the "Royal Premises"), in substantially the form attached hereto as Exhibit E, no later than ten (10) business days after the execution of this Lease.

23.3 This Lease is contingent upon the execution by Tenant and Landlord of an amendment to the Tully's Brewery Lease no later than ten (10) business days after the execution of this Lease, which shall amend the Tully's Brewery Lease to include this additional provision:

"Lessor and Lessee have entered into a separate lease agreement dated as of _____, 2004 (the "retail store lease"), providing for the construction by Lessor of a retail store with drive-through service on the Property, which shall be leased to Lessee pursuant to the retail store lease. Nothing in this section shall require the parties to construct such a store or execute such a retail store lease. However, in the event that such store is constructed by Lessor and leased by Lessee pursuant to the retail store lease:

- a) The retail store premises shall not be included within the Tully's Premises under the Lease.
- b) The construction, leasing and operation of the retail store shall not affect the respective privileges and responsibilities of Lessor and Lessee under the Lease, and shall not result in any change to the amount of Rent payable by Lessee under the Lease.
- c) All costs related to such retail store shall be paid by Lessor or Lessee, as applicable, as may be provided under the retail store lease, and such costs shall be excluded from the costs that are allocable as Monthly Operating Expenses under the Lease."

24. TULLY'S BREWERY LEASE AND THE LEASE.

24.1 Separate Agreements. Except as explicitly provided in this Lease, it is the intention and agreement of Landlord and Tenant that this Lease and the Tully's Brewery Lease shall be treated as separate agreements between the parties and that nothing in the Lease shall constitute an amendment or modification of the Tully's Brewery Lease.

24.2 Separate Amendments. Except as may be explicitly agreed in writing by the parties to the Lease, any future amendment or modification of the Tully's Brewery Lease shall not amend, modify or otherwise affect this Lease. Except as may be explicitly agreed in writing by the parties to the Tully's Brewery Lease, any future amendment or modification of the Lease shall not amend, modify or otherwise affect the Tully's Brewery Lease. Except as may be explicitly agreed in writing by the parties to the Tully's Brewery Lease and the Lease, the renewal, extension or termination of the Tully's Brewery Lease shall be of no effect to the Lease, and the renewal, extension or termination of the Lease shall be of no effect to the Tully's Brewery Lease.

24.3 Separate Performance. Except as may be explicitly agreed in writing by the parties to the Lease, the parties intend that the rights and obligations of Landlord and Tenant under the Lease shall be separate from their rights and obligations under the Tully's Brewery Lease. Except as may be explicitly agreed in writing by the parties to the Tully's Brewery Lease and the Lease, the occurrence of a Default by Tenant or Landlord under either of the Lease or the Tully's Brewery Lease shall not be considered to be a Default under the other agreement.

24.4 Monthly Operating Costs. Section 2.3 of the Sixth Amendment to the Tully's Brewery Lease requires that Tenant pay 50% of the Monthly Operating Expenses (as defined in the Tully's Brewery Lease) for the Property. However, the Lease requires that Landlord shall pay certain costs with respect to the Retail Store (including, but not limited to certain costs of maintenance, repairs and alterations under Section 6, certain insurance costs under Section 7, other costs under Sections 8 and 9, and certain real property taxes under Section 10). In determining the Monthly Operating Expenses to be paid 50% by Tenant under Section 2.3 of the Sixth Amendment to the Tully's Brewery Lease, Landlord shall exclude from the Monthly Operating Expenses all costs related to the Retail Store which Landlord is required to pay under the Lease.

24.5 Separate Utilities. Section 2.5 of the Sixth Amendment to the Tully's Brewery Lease provides for the allocation of certain utilities costs between Tenant and Landlord under the Tully's Brewery Lease. Under the Section 11 of this Lease, Landlord is obligated to pay certain the costs for water, sewer and trash removal related to the Retail Store, and Tenant is obligated to pay for the electricity, telephone and computer networking costs for the Retail Store. In determining the utilities to be allocated among the parties under Section 2.5 of the Sixth Amendment to the Tully's Brewery Lease, the parties shall exclude from the utilities costs to be allocated all costs related to the Retail Store which either Landlord or Tenant is required to pay under the Lease. If separate metering (or separate service and billings, as applicable) is not reasonably practicable, the parties shall negotiate an appropriate method to determine the amount of Retail Store utilities costs to be excluded from the utilities cost allocation under the Tully's Brewery Lease. If separate metering (or separate service and billings, as applicable) is not reasonably practicable for the Retail Store and the parties are unable to agree upon an appropriate method to allocate such costs, and during the time that the parties may be discussing the allocation method and/or until separate metering (or separate service and billings, as applicable) is accomplished if at all, the utilities costs to be excluded shall be reasonably determined by Tenant based upon the actual costs incurred by Tenant at a sample of comparable stores operated by Tenant in Seattle WA. Any costs related to establishment of separate metering shall be considered to be costs of Landlord's Work.

24.6 Separate Premises. The Retail Store shall not be included within the Tully's Premises under the Tully's Brewery Lease, and shall not result in any change to the amount of Rent payable by Lessee under the Tully's Brewery Lease. Notwithstanding this provision, Tenant may deduct from its payments of Rent and Monthly Operating Costs under the Tully's Brewery Lease any amounts owed by Landlord and payable to Tenant under Section 2.1 of this Lease which have not been paid by Landlord and which are past due by more than thirty (30) days.

24.7 Assignments. Landlord may separately assign the Tully's Brewery Lease without assigning the Lease, provided that the assignee of the Tully's Brewery Lease must agree as a condition of the assignment to the obligations of lessor for the Tully's Brewery Lease under Section 24 of this Lease, and Landlord shall indemnify Tenant for the failure of the assignee to perform in accordance with such agreement.

25. **EXHIBITS**. The following exhibits are attached to this Lease and by this reference are incorporated herein:

Exhibit A - Legal Description of Property
Exhibit B - Site Plan with Diagram of Retail Store Location
Exhibit C - Landlord's Work
Exhibit D - Tenant's Work
Exhibit E - Royal Termination Agreement (Form)
Exhibit F - Hazardous Substances on the Project or Property

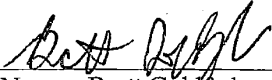
IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

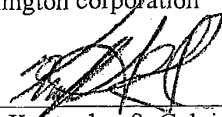
LANDLORD:

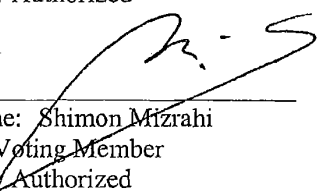
TENANT:

RAINIER COMMONS, LLC
a Washington limited liability company

TULLY'S COFFEE CORPORATION,
a Washington corporation

By: 
Name: Brett Goldfarb
Its: Voting Member
Duly Authorized

By: 
Kristopher S. Galvin
Its: Executive Vice President and CFO
Duly Authorized

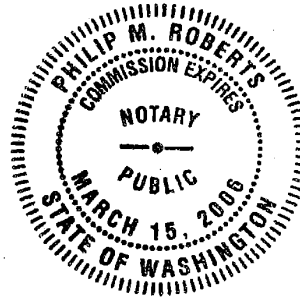
By: 
Name: Shimon Mizrahi
Its: Voting Member
Duly Authorized

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 7th day of October, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BRETT GOLDFARB, to me known to be the Voting Member of RAINIER COMMONS, LLC, a Washington limited liability company, the company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Philip M. Roberts
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My commission expires 3/15/06
Print Name: Philip M. Roberts

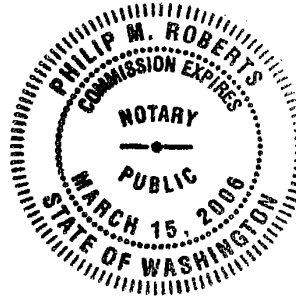


STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 7th day of October, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared SHIMON MIZRAHI, to me known to be the Voting Member of RAINIER COMMONS, LLC, a Washington limited liability company, the company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Philip M. Roberts
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My commission expires 3/15/06
Print Name: Philip M. Roberts



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 7th day of October, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kristopher S. Galvin, to me known to be the Executive Vice President and Chief Financial Officer of TULLY'S COFFEE CORPORATION, a Washington corporation, the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Philip M. Roberts
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My commission expires 3/15/06
Print Name: Philip M. Roberts

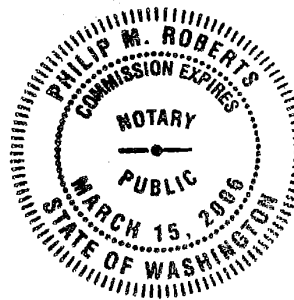


EXHIBIT A

LEGAL DESCRIPTION

Tax Parcel Number: 766620-3115

PARCEL 2:

Lots 1 through 6, Block 233, Seattle Tidelands, in King County, Washington, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington;

TOGETHER WITH Lots 1 through 12, Block 17, Hanford's Addition to South Seattle, according to the plat thereof recorded in Volume 1 of Plats, page 37, in King County, Washington;

TOGETHER WITH ALL of vacated alley in said Block 17, as vacated under City of Seattle Ordinance No. 38522;

TOGETHER WITH Lots 1 through 12, Block 16, Hanford's Addition to South Seattle, according to the plat thereof recorded in Volume 1 of Plats, page 37, in King County, Washington;

TOGETHER WITH ALL of vacated alley in said Blocks 16, as vacated under City of Seattle Ordinance No. 38521;

TOGETHER WITH ALL of vacated South Winthrop Street between said Blocks 16 and 17, as vacated under City of Seattle Ordinance No. 38522;

TOGETHER WITH that portion of vacated South Hanford Street adjoining Block 16, as vacated under City of Seattle Ordinance No. 69571 and would attach by operation of law;

TOGETHER WITH that portion of vacated Tenth Avenue South, as vacated under City of Seattle Ordinance No. 95836, and described as follows:

BEGINNING at the intersection of the production south of the East line of Block 16 of said Plat of Hanford's Addition to South Seattle and the Westerly right-of-way line of the Seattle Freeway (Primary State Highway No. 1); thence Northerly along said Westerly right-of-way line to the production east of the North line of Lot 12, Block 17 of said plat; thence West along said produced line to the East line of Block 17; thence South along said East line and the same produced and along the East line of Block 16 to the POINT OF BEGINNING; EXCEPT from the above described Parcel 2 any portion lying within the Northern Pacific Railway Company right-of-way; EXCEPT that portion as conveyed to the State of Washington for Primary State Highway No. 1 by deed recorded under Recording No. 6199964.

TULLY'S COFFEE

EXHIBIT B
SITE PLAN

North ↑

SOUTH STEVENS STREET

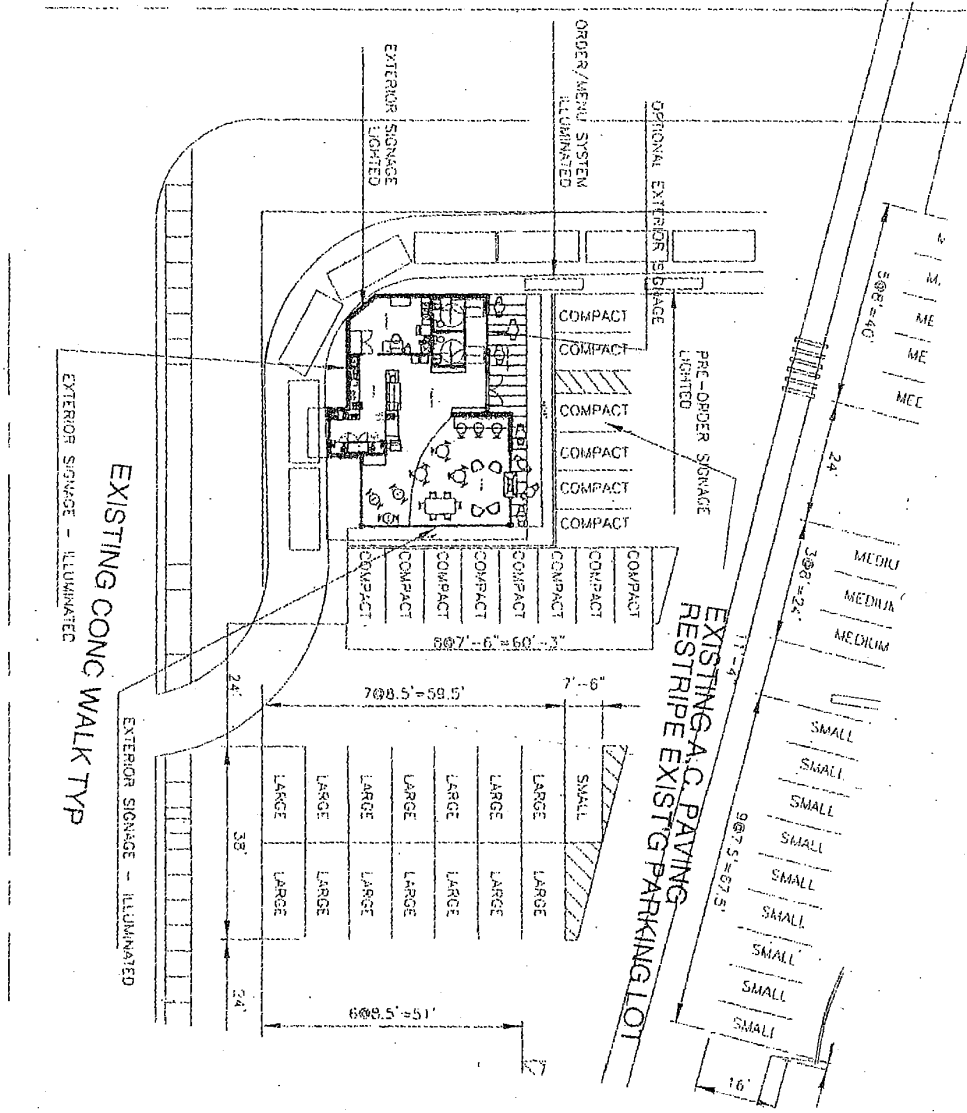


Exhibit C: Landlord's Work

Landlord: Rainier Commons LLC (the "Landlord")
1420 Fifth Ave., Suite 2625
Seattle, WA 98101

Tenant: Tully's Coffee Corporation (the "Tenant")
3100 Airport Way South
Seattle, WA 98134

Project: Tully's Coffee Retail Site with Drive Through

1. Landlord Responsibilities

1.1. General

- 1.1.1. Landlord shall perform all project management, design, construction management and construction services and provide all material, equipment, tools and labor necessary to complete the work described in and reasonably inferred from the Construction Documents.
- 1.1.2. Landlord, at its own expense, shall obtain and maintain in effect for the duration of this Project, the insurance coverage required including, without limitation, coverages required under the Lease and builder's "all risk" coverage (naming Tenant as an additional insured).

1.2. Design

Based on approved Design Development Documents generated by Tenant, Landlord at its own expense shall prepare for approval by the Tenant construction documents, consisting of Drawings, Specifications and other documents setting forth in detail the requirements for construction of the entire Project (the "Construction Documents").

1.2.1. Construction Documents

- a) The Construction Documents shall set forth in detail the architectural, structural, mechanical and electrical construction requirements for the Project.
- b) At the completion of construction the Landlord shall supply record drawings, and a copy of the final Construction Documents in digital format.
- c) Landlord shall file, at its own expense; all documents required for the approval by governmental authorities having jurisdiction over the Project and shall obtain, at its own expense, all necessary permits and a certificate of occupancy (if required by governmental authorities).

1.3. Construction Services/Construction Management Services

- 1.3.1. Landlord shall have complete control over and charge of and shall be responsible for construction means, methods, techniques, sequences or procedures. Landlord shall be deemed to have complete control over or charge of acts or omissions of all Landlord employees, agents, design professionals, and construction managers, as well as subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 1.3.2. At its own expense, the Landlord shall correct Work, which does not conform to the Construction Documents.
- 1.3.3. The Landlord warrants to the Tenant that materials and equipment incorporated in the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Construction Documents. The Landlord shall correct at its own expense, work not conforming to these requirements in accordance with the Construction Documents.
- 1.3.4. The Landlord shall pay all sales, consumer, use and similar taxes and shall secure and pay for building and other permits and government fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured or are legally required, including, without limitation, any "mitigation" fees (development impact, traffic, water/sewer, etc.) regardless of the name/title of such fees.

1.4. Site Work

Based on approved Design Development Documents generated by Tenant, Landlord at its own expense shall coordinate, engineer and complete all site work required by authorities having jurisdiction over such projects. This includes but is not limited to the following:

1.4.1. Parking:

- a) All parking studies and impact studies required by local codes.
- b) Identification and informational signage required by code to include indications that all upfront parking for patrons only.

1.4.2. Sidewalks:

- a) ADA required access.
- b) Patio areas and permits related to outdoor seating.

1.4.3. Drive Through:

- a) Engineering to provide adequate traffic flow through drive through area, and not less than an eight (8) car queue, including all site work, curbing, medians, lighting, wiring for signage and intercom, and landscaping.

1.4.4. Curb Cuts:

- a) All required curb cuts.

- b) Traffic studies and engineering costs to revise current parking area.

1.5. Construction

The Construction Documents listed in Section 2.1 are intended to reflect the Parties' understanding of their respective rights and responsibilities concerning the completion of the Work. Notwithstanding, the Landlord, at its own expense shall be responsible for the following items:

1.5.1.Shell:

- a) Exterior walls, roof structures and membrane, concrete slab, glass storefront and front and rear entrances. Exterior storefront will include one set of double doors with panic hardware. The clear opening shall be no less than 5'-0". The clear height opening shall be 7'-0".
- b) Receiving door shall be 36" wide, 18 gauge steel door with 16-gauge frame.
- c) Building design shall be based upon design concepts supplied by Tenant.

1.5.2.Perimeter Walls:

- a) Landlord shall construct exterior walls to provide an R-19 factor; or per local jurisdictional code, whichever is more stringent.

1.5.3.Storefront, Entry Doors and Interior Doors:

- a) Landlord shall construct all entrances at street or walkway level, and access ramp shall be installed per federal, state and local handicapped accessibility codes including all applicable clear space, radius landings, and railing.
- b) Storefront shall have a minimum of twenty (20) feet of glazing and double doors (door location and design to be specified by Tenant), containing vacuum-sealed, double-glazed glass. Front entrance shall be approved by local handicapped accessibility inspectors. All interior doors shall be solid core.
- c) Drive through window as determined by Tenant and specified in the Construction Documents.

1.5.4.Interior Walls:

- a) Landlord shall build all interior walls as determined by Tenant and specified in the Construction Documents.
- b) Walls shall be constructed with 5/8" Type X GWB. Restroom partitions to be constructed with 3 -5/8" metal studs (wood framing may also be accepted), insulation and 5/8" Type X GWB.
- c) Restroom shall contain painted 5/8" GWB ceiling. Exterior walls shall be furred out with 1 5/8" metal studs, insulation and 5/8" Type X GWB.

- d) All partitions to be taped and sanded to receive Tenant Specified finish.

1.5.5. Lighting Fixtures:

- a) Based upon Construction Documents, Landlord shall provide all lighting fixtures with the exception of lighting specified to be furnished by Tenant in Light Fixture Schedule

1.5.6. Telecomm:

- a) Landlord shall provide punch block, conduit and final connections for all communication services into the premises as determined by the Tenant and specified in the Construction Documents.
- b) Minimum conduit size shall be one inch (1").

1.5.7. Heating, Air Conditioning and Ventilation:

- a) Individually controlled refrigerated air conditioning and heating system (HVAC) of not less than one ton for each 250 sq. ft. of demised premises. The unit shall be sufficient to maintain the Premises at a temperature between 66 and 72 degrees Fahrenheit, 24 hours a day, 365 days per year. (Variable air volume systems are not acceptable). Landlord to provide gas cock unit whenever possible for energy efficiency. Final size and location per Tenant's specifications. Toilet room shall be exhausted at a minimum of two CFM per square foot of floor area.
- b) HVAC units shall be set in place with all curb cuts necessary to accommodate the same with appropriately sized condenser and air handler.
- c) Supply and all return ductwork shall be installed per plan.
- d) Landlord shall provide and install make-up air and exhaust ductwork.
- e) All electrical and plumbing connections shall comply with manufacturer's specifications.
- f) Landlord shall provide and install thermostats per code (Honeywell T7300 or equivalent); minimum one (1) for each unit with remote sensors to be located according to Tenant's plans and specifications.
- g) Landlord shall comply with energy efficiency/code compliance calculations with appropriate permit.

1.5.8. Life Safety:

- a) Where required by applicable codes, Landlord shall provide a 4" Main brought to Premises.
- b) If required by governmental authorities having jurisdiction over the Premises, automatic sprinklers shall be installed at the Landlord's own expense. Sprinkler system to include flow and tamper device.

- c) Landlord shall provide, at its own expense, fire alarm and security systems and illuminated exit signage.

1.5.9. Electrical:

- a) Landlord shall provide service for power and lighting to a location in the premise determined by the Tenant and specified in the Construction Documents with a minimum of a 200 amp service, 120/208 volt including but not limited to:
- b) Conduit from utility service point into Premises.
- c) CT block, meter base and meter.
- d) Lockable 200 amp panel(s) recessed mounted panels, with no less than 60 poles in a location designated by Tenant.
- e) Main feeders from utility service point to panel in Premises, main breaker and main disconnect to be dedicated for Tenant's use only. All breakers to be per Tenant's electrical panel diagram for the Premises.
- f) Energy efficiency calculations with appropriate permit.
- g) Landlord shall provide all electrical fixtures as set forth the Electrical Schedule, and as specified in the Construction Documents. Once casework is set in place, Landlord shall install fixtures and make all final connections.
- h) Three exterior signage outlets shall be provided as determined by Tenant and specified in Construction Documents.
- i) Power wiring and low voltage wiring for intercom pulled to drive through signage as determined by Tenant and specified in Construction Documents.

1.5.10. Plumbing:

- a) Landlord shall rough-in plumbing stubs as determined by the Tenant and specified in the Construction Documents. Landlord shall provide and install, at its own expense, all plumbing fixtures for the restrooms.
- b) Landlord shall provide 4" sanitary waste-line brought within Premises at suitable depth to drain per local code from any location within Premises. Waste branch lines distributed per Tenant's plans and specifications. No septic tank or similar systems.
- c) Landlord shall provide cold water supply line located pursuant to Tenant's plans and specifications sized to produce a minimum operating flow of 30 gallons per minute. Pressure reducing valve set at a maximum 70 PSI, minimum 50 PSI, in line water meter (3/4" minimum) to be upgraded if sprinklers required under "Life Safety" below, and gate valve. Water service to building must be protected by a back-flow preventor.
- d) Landlord shall provide 3" vent located above ceiling. Vent brought within the Premises from properly flashed vent through roof.

- e) Landlord shall provide 1 1/2" minimum water line feed with accessible shut off valve.
- f) Landlord shall provide a minimum of (2) recessed hose bids.
- g) Once casework is set in place, Landlord, with direction from Tenant, shall make fixture cutouts, set and make all final connections as specified in Equipment Schedule.

1.5.11. Gas Service:

- a) A gas pipe sized to accommodate delivery of 1.6 million BTU's of natural gas to the Premises.

1.5.12. Floors:

- a) Landlord shall be level 4" concrete slab or wood floor at street level, in stable, dry condition.
- b) Concrete floor shall be smooth, properly cured and with stable sub-grade.
- c) Landlord shall prepare floor to receive natural stone, ceramic tile and/or vinyl finish.

1.5.13. Wall Finishes:

- a) Landlord shall finish all wall surfaces as determined by Tenant and specified in Construction Documents.

Exhibit D: Tenant's Work

Landlord: Rainier Commons LLC (the "Landlord")
1420 Fifth Ave., Suite 2625
Seattle, WA 98101

Tenant: Tully's Coffee Corporation (the "Tenant")
3100 Airport Way South
Seattle, WA 98134

Project: Tully's Coffee Retail Site with Drive Through

1. Tenant Responsibilities

1.1. General

- 1.1.1. Tenant shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of design and construction.

1.2. Design

- 1.2.1. Tenant shall furnish Design Development Documents, which set forth in detail all major elements including interior architectural, electrical and plumbing requirements for a typical Tully's Coffee Corporation retail site.
- 1.2.2. Tenant shall furnish a Project Manual to include all specifications of furniture, fixtures and equipment.
- 1.2.3. Tenant shall, at its own expense, design, fabricate and install all case goods within the interior of the building as determined by the Tenant and specified in the Construction Documents.
- 1.2.4. Tenant shall, at its own expense, provide furniture, fixtures and equipment as set forth in the Furniture Schedule, Light Fixture Schedule, and Equipment Schedule.

1.3. Construction

The Construction Documents listed in Section 1.1 are intended to reflect the Parties' understanding of their respective rights and responsibilities concerning the completion of the Work. Notwithstanding, the Tenant, at its own expense shall be responsible for the following items:

1.3.1. Casework:

- a) Contract and coordinate the installation of all casework as specified in the Construction Documents.

1.3.2. Flooring:

- a) Provide all flooring materials as indicated in the Construction Documents.

- b) Contract and coordinate the installation of all flooring materials as indicated in the Construction Documents.

1.3.3. Signage:

- a) Provide all interior and exterior signage (other than exit and emergency signage) as indicated in the Construction Documents.
- b) Contract and coordinate the installation of all interior and exterior signage as specified in the Construction Documents.

1.3.4. FF&E:

- a) Provide all furniture, fixtures and equipment as set forth in the Equipment Schedule and specified in the Construction Documents.
- b) Install all furniture fixtures and equipment as set forth in the Equipment Scheduled and specified in the Construction Documents.

1.3.5. Plumbing

- a) Provide all sinks and plumbing fixtures for the kitchen and service area. Solely for purposes of clarification, it is noted that the restrooms are not included within the kitchen and service area.
- b) Install all sinks and plumbing fixtures for the kitchen and service area.

EXHIBIT E

(Form of)

OPTION AGREEMENT TO TERMINATE SUBLEASE
(Ariel Development, Inc./Tully's Coffee Corporation)

#395690 v2 - Tully's Retail Lease - final
395690.02
395690.02
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395690.02

- 37 -

RCLLC 0001071

AGREEMENT TO TERMINATE SUBLEASE
(Ariel Development, Inc./Tully's Coffee Corporation)

This Agreement to Terminate Sublease (the "Agreement") is executed as of October 7, 2004, between ARIEL DEVELOPMENT, INC., a Washington corporation ("Tenant") and TULLY'S COFFEE CORPORATION, a Washington corporation ("Subtenant").

RECITALS

A. On February 8, 1996 Tenant and Subtenant entered into a Commercial Sublease dated February 8, 1996 (the "Sublease"), for a portion of that certain retail property at 1046 First Avenue South, Seattle, Washington (the "Royal Premises").

B. Tenant and Subtenant desire to terminate the Sublease under the terms and conditions set forth in this Agreement:

AGREEMENT

In consideration of the mutual promises set forth herein the parties agree as follows:

1. Tenant and Subtenant hereby terminate the Sublease effective on November 1, 2004 (the "Termination Date"), subject to the terms and conditions contained in this Agreement.
2. In consideration for Subtenant's agreement to terminate the Sublease, Tenant shall pay to Subtenant a lease termination fee in the amount of Ninety Thousand Dollars (\$90,000.00) (the "Termination Fee") concurrently with it's execution of this Agreement.
3. Subtenant shall terminate its retail operations in the Royal Premises as of a date determined by Subtenant prior to the Termination Date, and shall notify Tenant of the date of termination for the retail operations. Subtenant shall remove its inventories, furniture, movable trade fixtures and trade equipment from the Royal Premises on or before the Termination Date.
4. The Sublease shall terminate in its entirety and have no further legal effect on the Termination Date. Subtenant and Tenant shall evidence the termination of the Sublease by executing an amendment to the Sublease in the form attached hereto as Exhibit 1.
5. This Agreement is contingent upon Rainier Commons, LLC, as "Landlord", and Tully's Coffee Corporation, as "Tenant", negotiating and executing a mutually acceptable Lease agreement for a "build to suit" retail store (the "Retail Store Lease") and shall become effective only upon the execution of the Retail Store Lease by both Rainier Commons, LLC and Tully's Coffee Corporation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TENANT:

ARIEL DEVELOPMENT, INC.

a Washington corporation

By: _____

Name: _____

Its: _____

SUBTENANT:

TULLY'S COFFEE CORPORATION

A Washington corporation

By: _____

Kristopher S. Galvin

Its: Executive Vice President

(Acknowledgments begin on following page)

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

On this _____ day of _____, 2004, before me personally appeared _____, the _____ of ARIEL DEVELOPMENT, INC., who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Print Name)

Notary Public in and for the State
of Washington, residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this _____ day of _____, 2004, before me personally appeared _____, the _____ of TULLY'S COFFEE CORPORATION, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Print Name)

Notary Public in and for the State
of Washington, residing at _____
My Commission Expires: _____

EXHIBIT 1 TO AGREEMENT TO TERMINATE SUBLEASE

FORM OF FIRST AMENDMENT TO SUBLEASE (Ariel Development, Inc./Tully's Coffee Corporation)

This First Amendment to Sublease is executed this ____ day of ____, 200__, between ARIEL DEVELOPMENT, INC., a Washington corporation ("Tenant") and TULLY'S COFFEE CORPORATION, a Washington corporation ("Subtenant").

RECITALS

A. On February 8, 1996 Tenant and Subtenant entered into a Commercial Sublease dated February 8, 1996 (the "Sublease"), for a portion of that certain retail property at 1046 First Avenue South, Seattle, Washington (the "Royal Premises").

B. Tenant and Subtenant desire to terminate the Sublease under the terms and conditions set forth in this First Amendment:

AGREEMENT

In consideration of the mutual promises set forth herein the parties agree as follows:

1. The Sublease shall terminate in its entirety and have no further legal effect on November 1, 2004 (the "Termination Date").
2. Subtenant shall terminate its retail operations in the Royal Premises as of a date determined by Subtenant prior to the Termination Date, and shall notify Tenant of the date of termination for the retail operations. Subtenant shall remove its inventories, furniture, movable trade fixtures and trade equipment from the Royal Premises on or before the Termination Date.
3. Effective as of the Termination Date:
 - a. Tenant on behalf of itself, its successors and assigns hereby releases, acquits, and forever discharges Subtenant from all claims whether known or unknown and all further rights and remedies, claims, demands, causes of actions against Subtenant which arise out of or result from or in anyway relate to the Sublease. Tenant waives any rights under Washington law limiting or restricting the release of known or unknown claims.
 - b. Subtenant on behalf of itself, its successors and assigns hereby releases, acquits and forever discharges Tenant of all claims whether known or unknown, and all further rights and remedies, claims, demands, causes of action against Tenant which arise out of or result from or in anyway relate to the Sublease. Subtenant waives any rights under Washington law limiting or restricting the release of known or unknown claims.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Sublease as of the date first above written.

TENANT:

ARIEL DEVELOPMENT, INC.
a Washington corporation

By: _____
Name: _____
Its: _____

SUBTENANT:

TULLY'S COFFEE CORPORATION
A Washington corporation

By: _____
Name: _____
Its: _____

(Acknowledgments begin on following page)

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

On this _____ day of _____, 2004, before me personally appeared _____, the _____ of ARIEL DEVELOPMENT, INC., who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Print Name)

Notary Public in and for the State
of Washington, residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this _____ day of _____, 2004, before me personally appeared _____, the _____ of TULLY'S COFFEE CORPORATION, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Print Name)

Notary Public in and for the State
of Washington, residing at _____
My Commission Expires: _____

EXHIBIT F

Hazardous Substances on the Project or Property

[Landlord to attach listing prior to execution]

NONE

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (the "Amendment") is made and entered into this 21 day of December, 2009, between RAINIER COMMONS, LLC, a Washington limited liability company ("Landlord") and TC GLOBAL, INC. dba Tully's Coffee, a Washington corporation, formerly known as TULLY'S COFFEE CORPORATION, a Washington corporation ("Tenant").

RECITALS

A. Landlord is the owner of certain real property and improvements situated thereon located at 3100 Airport Way South, Seattle, Washington (the "Property"). Situated on the Property, among other buildings and improvements, is a free-standing retail store with drive-through facilities that is leased by Landlord to Tenant pursuant to a lease dated October 7, 2004 (the "Lease").

B. Tenant has elected to extend the initial term of the Lease which extension shall commence on May 11, 2010 and be for a period of five (5) years terminating on May 10, 2015.

C. The parties have agreed to adjust the Gross Rent to be a minimum amount of \$2,817.00 per month with annual increases based on increases in the Consumer Price Index commencing on May 11, 2011.

D. The Lease also provides for percentage rent to be paid by Tenant to Landlord and the parties desire to change amount and times for payment of such percentage rent.

NOW, THEREFORE, in consideration of the recitals, which are incorporated herein by reference, the covenants and premises contained herein, and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the Lease shall be amended as follows:

1. Extension Term. The term of the Lease is hereby extended to May 10, 2015 upon the same terms and conditions contained in the Lease, except as herein amended (the "Extended Term").

2. Extension. Section 2.4.1 is amended to provide that Tenant now has one (1) option to extend the Lease as provided in Section 2.4.1, it being acknowledged that this First Amendment to the Lease represents the exercise of Tenant's first extension.

3. Gross Rent. Section 3.1 of the Lease is hereby amended to read as follows:

Landlord and Tenant intend that this Lease shall be a "gross" lease whereby Tenant shall pay the rent amount set forth in the Lease and landlord shall be responsible for payment of all taxes, insurance, utilities (to the extent set forth in Section 11 of the Lease), trash service, and all maintenance obligations set forth herein with respect to the Retail Store, the Common Areas, and the Project without any additional compensation or reimbursement from Tenant whatsoever. Tenant shall pay to Landlord at the address stated herein, or to such other person or at such other place as Landlord may designate in writing, rent as follows ("Gross Rent"):

Commencing May 11, 2010, Tenant shall pay the Gross Rent of Two Thousand Eight Hundred Seventeen and NO/100 Dollars (\$2,817.00) per month. Such amount shall be increased on June 1, 2011, for the ensuing twelve (12) months, to an amount equal to the percentage increase in the Consumer Price Index ("CPI") (defined below) between May 1 of the prior year and May 1 of the current year (generically "Comparison Date"); provided, however in no event shall the Gross Rent be decreased. Similar increases shall be made to the Gross Rent (as adjusted) effective on June 1 of each year thereafter by the percentage increase in the CPI between the prior Comparison Date and the then current Comparison Date. The term "CPI" shall mean the Consumer Price Index, all Urban Consumers, Subgroup "All Items," United States City average (base year 1982-1984=100), which is presently being published in the United States Department of Labor, Bureau of Labor Statistics. If the CPI is changed so that the base year is altered, then the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to obtain the same results that would have been obtained had the base year not been changed. If no conversion factor is available, or if the CPI is otherwise changed, revised or discontinued for any reason, there shall be substituted in lieu thereof, and the term "CPI" shall thereafter refer to, the most nearly comparable official price index of the United States Government in order to obtain substantially the same result hereunder as would have been obtained had the original CPI not been discontinued, revised or changed. If the parties are not able to reach

agreement as to the official price index to be used, the dispute shall be settled by arbitration in Seattle, Washington, pursuant to the rules of the American Arbitration Association then in effect.

4. Percentage Rent. Section 3.2 of the Lease is hereby amended to read as follows:

In addition to the Gross Rent to be paid by Tenant pursuant to Section 3.1 above, Tenant shall pay to Landlord each month percentage rent in an amount calculated by multiplying Tenant's Gross Sales from the Retail Store for each month by ten percent (10%)(the "Gross Sales Percentage Amount"), and subtracting therefrom Gross Rent paid by Tenant in such month, with the resulting figure defined as the "Percentage Rent". Within thirty (30) days after the end of each month during this Extended Term, Tenant shall furnish to Landlord a written statement certified by Tenant to be correct, showing total Gross Sales made in, upon, and/or from the Retail Store during the preceding month, at which time Tenant shall pay to Landlord the Percentage Rent for such month, provided however that the Percentage Rent is a positive number. Notwithstanding the foregoing, within thirty (30) days after the end of each calendar year during the Extended Term, Tenant shall furnish to Landlord a written statement certified by Tenant to be correct, showing total Gross Sales made in, upon, and/or from the Retail Store during the preceding calendar year and shall compute the amount of Percentage Rent that would have been paid for such year. If the Gross Rent actually paid by Tenant for such year exceeds the Gross Sales Percentage Amount calculated for such same year, then Landlord shall reimburse Tenant for the excess within thirty (30) days or shall credit the amount owed against future payments of Gross Rent.

The Term "Gross Sales" shall mean the gross proceeds collected by Tenant from third party customers (including, without limitation, employees and shareholders of Tenant) from the sales of products or services in the Retail Store, but shall not include any of the following items: (a) goods returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant; (b) receipts from public telephones, wireless, and other computer networks installed solely for use by the Tenant, Tenant's employees or invitees; (c) sales taxes, so-called luxury taxes, consumer's excise taxes, gross receipt taxes, and other similar taxes now or hereafter imposed upon the sale of merchandise or services if collected from customers; (d) sales of fixtures, equipment, property, or bulk sales not in the ordinary course of business; (e) sales of gift certificates and gift cards; (f) fees received for classes, demonstrations, and franchise sales

events conducted within the Retail Store at no profit to Tenant and for the primary purpose of selling franchises, training employees of Tenant or increasing Gross Sales; (g) sales or transfers of coffee, foodstuffs, or other products from the Retail Store for use in meetings and events within the Tully's Premises; (h) allowances and discounts received from suppliers for the promotion or sale of their products or services within the Retail Store; (i) insurance proceeds received from the settlement of claims for loss or damage to merchandise, fixtures, or other personal property of the Tenant. Tenant may maintain its sales records at such location as may be used for Tenant's accounting functions. Such books and records with respect to each month, and each calendar year, shall be kept for a period of not less than two (2) years after submission to Landlord of the Gross Sales statement or statements for each calendar year. Landlord shall have the right, but not more than once during any twelve (12) month period, to make independent examinations or audits of all of Tenant's books, records, and accounts which pertain to or show Gross Sales, or to have same made by an accountant or certified public accountants designated by Landlord. Such audits shall be limited to the determination of the Gross Sales as defined herein and shall be conducted at Tenant's home office during normal business hours and after reasonable prior notice. If the examination or audit shows that there has been a deficiency in the payment of percentage rent, Tenant shall immediately pay to Landlord the deficiency, together with interest at the rate of twelve percent (12%) per annum from the date the payment should have been made. If, as a result of any audit of Tenant's records it is determined that Gross Sales are understated by more than three percent (3%), and if percentage rental is due to Landlord because of such understatement, then, in addition to the payment provided for above, Tenant shall pay the reasonable cost and expenses incurred in connection with such audit. Any information gained from statements as herein provided or any examination or audit shall be confidential and shall not be disclosed except to carry out the purposes hereof; provided, however, that Landlord may disclose the contents of any such statements and/or audit in connection with any financing arrangements or assignment of Landlord's interest in the Leased Premises.

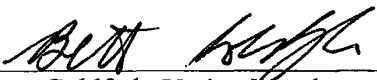
5. Other Terms. Except as amended herein, all of the other terms and conditions of the Lease shall remain in full force and effect.

6. Counterparts. This Amendment may be executed in counterparts and all of the counterparts shall constitute one and the same agreement, notwithstanding that all parties hereto are not signatories to the same, original documents.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year set forth above.

"LANDLORD"


RAINIER COMMONS, LLC,

By 
Brett Goldfarb, Voting Member

By 
Shimon Mizrahi, Voting Member

"TENANT"
CORPORATION,

TC GLOBAL, INC. dba Tully's Coffee

By 
Carl Pennington

Its President & CEO

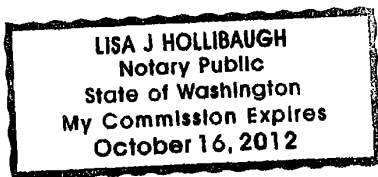
STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this 18th day of December, 2009, before me personally appeared Carl Remington, the Pres & CEO of TC GLOBAL, INC. dba Tully's Coffee, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Lisa Hollibaugh
(Signature of Notary)
Lisa Hollibaugh
(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State
of Washington
My Appointment Expires: Oct. 2012